



PC AGENDA: Feb. 13, 2002
ITEM:

Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

**SUBJECT: PROTEST OF A MITIGATED
NEGATIVE DECLARATION FOR
CONDITIONAL USE PERMIT FILE NO. CP 01-12-108**

DATE: February 6, 2002

COUNCIL DISTRICT: 4

BACKGROUND

This is a protest of a Mitigated Negative Declaration (ND) prepared for a Conditional Use Permit to allow construction of a curbside recycling processing and transfer facility on the subject site.

The owner, Ba Van Le, on behalf of the developer, California Waste Solutions, filed a Conditional Use Permit application and Environmental Clearance application to allow construction of a curbside recycling processing and transfer facility on the subject site. The site is 3.57 gross acres located at the northeasterly corner of Timothy Drive and Yard Court (1005 Timothy Drive). Two zoning designations exist on the property: the southerly parcel (APN 254-013-128) fronting on Timothy Drive is zoned LI-Light Industrial and the northerly parcel (APN 254-013-126) is zoned HI-Heavy Industrial.

The Zoning Ordinance requires a Special Use Permit for a recycling processing and transfer facility in the HI-Heavy Industrial and the LI-Light Industrial zoning districts. However, a CUP is required when the sound pressure level generated by any use or combination of uses on the subject site will exceed the decibel level at any property line as shown in Table 20-135 of the Zoning Ordinance.

Surrounding Uses

On its westerly side, the subject site is adjacent to industrial manufacturing and service businesses that front on Timothy Drive. These businesses include Macro-Metallics, Vision Printing, and Elcon Inc. at 1009 Timothy. Northwesternly of the subject site, at 1158 Berryessa Road, is the Norcal corporation yard and green waste transfer facility (currently under construction). Immediately adjoining the subject site to the north and northeast, at 11740 Berryessa Road, is a site owned by SRDC, Inc. (the former San Jose Self-Storage site) which has a pending Conditional Use Permit application for a concrete/asphalt crushing and recycling facility. Adjoining the subject site to the east, and fronting on Yard Court (1261 Yard Court), is Gonzalez Pallet Company. Muller Construction Supply is located southeasterly, across Yard Court (1230 Yard Court). Also across Yard Court on the southeasterly corner of Timothy Drive

and Yard Court is Sanmina Corporation electronics manufacturing (1015 Timothy Drive). Across Timothy Drive at the southwesterly corner is Spectral Dynamics (1014 Timothy Drive). Other businesses in the vicinity of the site consist of a mix of industrial services, manufacturing and construction uses on Timothy Drive including Phantom Manufacturing, MBA Office Supply, Rosendin Electric, Unilab, C.L. Hann Industries, Blossom Valley Landscaping, and Bruns Belmont Construction.

Environmental Review

A Mitigated Negative Declaration was circulated on December 24, 2001 to property owners/tenants within 500 feet of the subject site. The Mitigated Negative Declaration and Initial Study were also sent to the State Clearing House for distribution to responsible local, regional, and State agencies. The public review period for the Mitigated Negative Declaration lasted from December 24, 2001 to January 22, 2002. Letters from the California Department of Transportation and the California Integrated Waste Management Board were received by the State Clearing House on January 22, 2002. These letters, which are attached, include comments on the Mitigated Negative Declaration and Initial Study.

One letter protesting the adequacy of the Mitigated Negative Declaration was filed in the Department of Planning, Building and Code Enforcement on January 22, 2002. This letter is also attached.

Comments from other Agencies during the Circulation Period

The letter sent by the California Department of Transportation states that their staff reviewed the Initial Study and are satisfied with the document.

The letter sent by California Integrated Waste Management Board (CIWMB) staff notes that California Waste Solutions must meet a “three-part test” with the following requirements: (1) materials be separated for reuse prior to receipt; (2) the materials received by the facility must contain less than 10% residual material; and (3) putrescible waste in the separated-for-reuse material shall be less than 1% of the amount of separated-for-reuse material received by weight. If California Waste Solutions fails to meet the “three-part test” the site must apply for a Solid Waste Facility Permit with both the City of San Jose and the California Integrated Waste Management Board to continue operation as a transfer facility.

Although the proposed Conditional Use Permit currently will not allow a Solid Waste Facility as defined by the CIWMB, City of San Jose Planning staff will recommend that this requirement be expressly stated as a condition in the proposed permit.

Consultation with other Agencies in Preparation of the Initial Study

Prior to circulation of the Mitigated Negative Declaration, the preparation of the Initial Study was coordinated and reviewed by Planning staff in consultation with the Local Enforcement Agency, and the California Integrated Waste Management Board.

ANALYSIS

The Draft Mitigated Negative Declaration for this project was prepared in conformance with the California Environmental Quality Act (CEQA). Section 21080(c) of the CEQA Statute and Section 15070 of the Guidelines specify that a Negative Declaration may be prepared where the Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment. The Initial Study prepared for this project examined the potential for the project to result in significant environmental impacts. The Director of Planning concluded that the project would not result in a significant environmental impact and would not require the preparation of an Environmental Impact Report (EIR).

The City of San Jose received one letter of protest on the Draft Mitigated Negative Declaration. The letter is reproduced in sections on the following pages, followed by the City's response to the issues raised in the letter. In addition, a complete copy of the letter itself is attached.

RESPONSE TO COMMENTS FROM ROSENDIN ELECTRIC, INC. C/O BERLINER COHEN, RECEIVED JANUARY 22, 2002

COMMENT 1

The Applicant's traffic capacity analysis understates traffic generation and intersection operation impacts that will result from the Project.

The volumes of traffic generated may be significantly greater than the Applicant's Report indicates. The Applicant's Report fails to adjust the volumes of traffic generated to account for the large percentage of trucks [as opposed to private passenger vehicles] associated with the Project. The truck volume should be multiplied by 1.5 to 2.0 (passenger car equivalent or PCE) to account for trucks' larger size and reduced acceleration capabilities, and then entered into the capacity analysis.

The traffic study by Korve Engineering raises a fair argument that the Project may result in significant impacts to the operation of the intersection at Oakland Road and US 101 North in the a.m. peak hour. The Applicant's Report states that a significant traffic impact would occur if the Project results in a demand-to-capacity ratio (V/C) increase of .01 or more and a Critical Delay increase of 4 seconds or more, and determines that the Project causes a V/C increase of .007 and a Critical Delay increase of 3.7 seconds. However, when the impacts are recalculated to assume a 2.0 PCE because the added vehicles are trucks and not autos, the resulting Critical Delay increase is 6.5 seconds and the Critical V/C increase is .012. The Project therefore will have a significant traffic impact at Oakland Road and US 101. In addition, the traffic volume values used in the analysis should be increased or the saturation flow values used should be decreased to account for the large volume of truck traffic that already exists in the area along with trucks that will be generated by this Project.

The Korve Study points out that any delay and even a slight decrease in the efficiency of the operations could result in trucks returning later, affecting the p.m. peak hour, or more trucks returning than anticipated, and traffic impacts consequently could be greater than analyzed. Furthermore, the trip generation analysis should be based upon measurements at similar facilities.

RESPONSE TO COMMENT No. 1

No Significant Traffic Impacts

The Traffic Impact Analysis (TIA) was prepared in accordance with the City of San Jose's guidelines and was reviewed and approved by the City of San Jose Public Works staff. The City of San Jose Traffic Impact Analysis guidelines and adopted Transportation Level of Service Policy methodology do not specify any special procedure for handling truck traffic, and for the purpose of planning documents, truck traffic is not considered separately.

The method by which passenger car equivalents were applied in the level of service calculations conducted by Korve Engineering does not follow the Highway Capacity Manual (HCM). The HCM prescribes that the presence of heavy vehicles at a signalized intersection should be handled by adjusting the saturation flow rate for the affected turning movement accordingly based on the percentage of heavy vehicles in the traffic stream for that movement. The percentage of truck traffic in the intersection turning movements is not available since vehicle classification counts (counts which distinguish between automobiles and trucks) at intersections are not performed for Traffic Impact Analyses conducted for planning purposes in the City of San Jose. However, this is not to say that truck traffic at signalized intersections is ignored in the level of service calculations.

As discussed on page 6 of the project's Traffic Impact Analysis, the study intersections were analyzed using the City of San Jose level of service methodology, which employs the CMP (Santa Clara County Congestion Management Program) default values for the analysis parameters. One such analysis parameter is intersection saturation flow rate. The default saturation flow rates for intersection turning movements were established by the CMP are based on observations of existing traffic operations at intersections within the county. The default saturation flow rates represent intersection operations resulting from typical traffic conditions. Under typical traffic conditions, the composition of traffic using a transportation facility will include approximately 2-percent trucks. Therefore, the CMP default saturation flow rates reflect traffic conditions with approximately 2-percent trucks. To verify that the saturation flow rates used in the analysis are accurate, truck counts were conducted at the Oakland Road/US 101 (N) intersection to determine the percentage of trucks passing through the intersection. These data show that traffic at this intersection is composed of approximately 3-percent trucks. The difference in saturation flow rates between conditions with 2-percent trucks to those with 3-percent trucks would be insignificant (0.5%). Therefore, the saturation flow rates used in the analysis are appropriate for the level of analysis.

Additionally, the trip generation contained in the traffic impact analysis for the recycling center was based on the proposed project description and operations. The proposed operations of the facility called for load-out trucks (tractor-trailer trucks) to operate at the facility from 6:00 AM to 11:30 PM. These operations included 16 load-out truck trips during the AM peak commute period and 8 during the PM peak commute period. Subsequent to the preparation of the traffic analysis, the Department of Public Works recommended a condition of approval on the project which states that load-out truck trips will not be allowed during the AM peak commute period from 7-8 AM and during the PM peak commute period from 4-6 PM. This limitation on load-out truck trips has been included by Planning staff as a condition of the Conditional Use Permit. The applicant has since agreed to extend the a.m. truck restriction to 9 AM. Therefore, based on these conditions, the facility would generate no load-out truck trips during the AM and PM peak hours. The elimination of load-out truck traffic during the peak hours would further reduce the project's less-than significant impact on the study intersections.

The trip generation analysis is based on the project description and operations for the proposed facility. For this particular type of development, surveying a similar facility would not provide accurate information since the trip generation characteristics of recycling facilities are heavily affected by the size of the community served, the operating hours of the collection vehicles, the technology used on the collection vehicles, and the technology used at the facility. For example, the trip generation for this facility are based on a "single pass" collection vehicle as described in the proposed project description. The single pass collection vehicle does not contain the same quantity of recyclable materials as the current collection vehicles. Consequently, for the purpose of collecting trip generation data, a similar facility does not exist. Norcal has indicated that the truck drivers begin their nine-hour shifts around 5:30 AM and end between 2:30 to 3:30 PM. In order for a truck to arrive at the recycling facility after 4:00 PM, which is the start of the PM peak commute period, the driver must be approximately one hour behind schedule. The probability of route drivers routinely finishing behind schedule is very small. In the event that this does become a problem, it is possible to add additional drivers so that the routes are finished on time.

COMMENT 2

The Applicant's traffic analysis understates impacts of queuing trucks resulting from the Project.

Queuing at the northbound left turn lane at Oakland/US 101 North and the westbound left turn lane at Hedding/Berryessa/Mabury will be a significant problem. The two cited intersections already are insufficient for traffic queues, and as pointed out above, the amount of truck traffic is not accurately reflected in the TRAFFIX analysis used in the Applicant's Report and furthermore, the Applicant's Report assumes an average vehicle length of 20 feet when an average vehicle spacing for passenger cars of 25 feet should be used according to CalTrans standards, along with an adjustment for the fact that it is trucks, not cars, being added to the queues.

Also, queuing trucks from this Project will impede vehicular movement in the immediate area and block access to the driveways and offices of surrounding businesses. The inadequate analysis of off-site queuing is exacerbated by the lack of quantification of on-site queuing. Before trucks may even enter the site, they must weigh-in individually at the entrance scale, and consequent queuing back-ups onto Yard Court were not even considered in the Applicant's Report, only in the summary project description. And no notice was made of the fact that on-street parking is used to capacity, limiting the ability of trucks to queue on the side of the roads. Off-site parking and queuing effects would be made even worse if the Applicant were permitted to widen its driveways to 36 feet as recommended by the Applicant's Report for the convenience of the Applicant, thereby further reducing on-street parking and queuing space.

RESPONSE TO COMMENT No. 2

No Significant Impacts from Queuing of Trucks

The Traffic analysis was prepared in accordance with the City of San Jose's guidelines and does not under estimate the traffic-queuing impact associated with the proposed project. As discussed in the project's Traffic Impact Analysis (pages 32-33), according to the level-of-service calculations, the storage capacity for queued vehicles in the subject turning movements would be inadequate under project conditions. However, the same turning movements under background conditions also would have inadequate storage capacity for queued vehicles. The addition of traffic from the project does not cause the queuing problems; these are existing problems. In fact, the analysis shows that the addition of project traffic would not increase the length of the 95th percentile queue beyond what is already present under background conditions. The 95th percentile queue is effectively the maximum queue that can be expected to occur at a particular turning movement during the peak hour. The 95th percentile queue would occur on 5 percent of the signal cycles for the subject turning movement. At Oakland Road and US 101 (N), an intersection with an 80-second signal cycle length, the 95th percentile queue could be expected to occur two to three times during the peak hour. Similarly, at Hedding Road/Berryessa Road and Mabury Road, which has a 100-second cycle length, the 95th percentile queue could be expected to occur one to two times during the peak hour. Therefore, the likelihood that the 95th percentile queues at these intersections would be increased by the small number of project trips added is very low. Again, these results are based on the assumption that load-out trucks would operate during the peak hours. Since the recommended conditions of approval for this project disallow load-out truck traffic from 7 to 9 AM and from 4 to 6 PM, the project's effect on queuing conditions at these and other intersections would be significantly reduced during the peak hours.

Although Caltrans may recommend that 25 feet per vehicle be used for queue length calculations, the study intersections are under the jurisdiction of the City of San Jose and are subject to the City's analysis procedures, which call for queue lengths to be calculated assuming 20 feet per vehicle.

The queuing conditions would not at these, nor at any other locations, be made significantly worse by the addition of project traffic. Nevertheless, recognizing that the project is located in a heavily-congested area, the project includes a condition to make a fair share contribution toward regional traffic mitigation improvements at the intersection of Commercial Street and Old Oakland Road, as discussed in the memo from the City of San Jose Public Works Department to the Planning Department (December 11, 2001).

The analysis of on-site vehicle queuing is thoroughly discussed in the Project Description (pages 23 and 24). The operations of the facility are designed so that incoming trucks would not queue back onto Yard Court. The weigh-in process occurs on-site at the 70-foot weigh-in scale, located approximately 180 feet from the Yard Court driveway. The weigh-in scale is a dynamic scale, and each truck will be equipped with a radio frequency identification (RFID) tag. This technology eliminates the need for collection trucks to stop on the scale, allowing for the weighing of collection trucks to take less than 10 seconds each. Therefore, the chance of a backup occurring at the scale is very small. Nevertheless, in the unlikely event that a backup does occur, there is enough space between the inbound scale and the Yard Court driveway to queue seven trucks, utilizing two entrance lanes. Incoming trucks would not use on-street parking spaces on Yard Court as waiting areas to enter the site. First, because of the design of the site and the operations of the weigh-in process, incoming trucks will not queue back onto Yard Court. Second, the project site will provide adequate space on-site in the event that trucks must wait somewhere to weigh in or off-load material. There is enough space on-site to provide parking for 22 collection trucks, in addition to the 11 trucks that can off-load simultaneously, and the 7 trucks that can queue on the entrance lanes approaching the inbound scale. Therefore, a situation where trucks are forced to wait on Yard Court to enter the site is extremely unlikely to occur.

The Timothy Drive site was specifically selected for its on-site truck queuing capacity. The applicant previously submitted an application for the development of a Recycling Facility in south central San Jose, on Burke Street. While the application was under review, the City Planning Department in conjunction with the Environmental Services Department and the Public Works Department identified the need for ample on-site queuing capacity as a key feature of this type of use. The applicant identified two sites, one nearby to the Burke Street site on Quinn Avenue and a second, at the Timothy Drive location. The applicant met with the various city departments in addition to the council members of each district and Norcal. Given the choice between both sites, the Timothy Drive site was selected by Norcal as the preferred location for a variety of reasons, one of the primary being the site's ample on-site truck queuing capacity.

The loss of six feet of curb space along the project frontage on Yard Court will not cause a significant impact to on-street parking.

COMMENT 3

The Applicant's traffic analysis fails to address traffic safety concerns raised by the Project. The Applicant's Report fails to adequately address traffic safety issues in an already dangerous area. The Applicant's proposed circulation route requires incoming trucks to drive from Mabury Road onto Timothy Drive, which is a small street with a blind curve in a light industrial area, before making two more sharp turns onto Yard Court and into the Project site. Many of the local

businesses' employees leave work and then return at the same time as the trucks are planned to arrive and exit the Project, and on-street parking is used to capacity. The Kolve Study points out that the large number of heavy trucks on Timothy Drive, which lacks sidewalks and has poor visibility and maneuverability, will create a safety hazard for persons as they access their vehicles and pull away from the curb. Driving these local streets with large trucks coming in at the same time at a rate of one/minute is also a traffic safety issue.

The Kolve Study points out that traffic safety issues can be alleviated if access for all truck movements is taken from Berryessa Road. The City already has approved a greenwaste recycling and transfer station facility on Berryessa Road adjacent the Project site pursuant to CP-01-07-058, to be operated by Norcal Waste Systems. Trucks from this Project, which will be operated by a subcontractor for Norcal, will be stored at the Norcal facility at night. All truck access to the Project site could be taken from the rear of the site and through the Norcal property, thereby minimizing traffic impacts in the Yard Court, Timothy Drive and Mabury Road industrial park area.

RESPONSE TO COMMENT No. 3

No Significant Impacts to Traffic Safety

The Traffic analysis was prepared in accordance with the City of San Jose's guidelines and does not fail to address traffic safety concerns raised by the proposed project. The project is located in an industrial area surrounded by industrial streets. When driving in such an area, one can expect to encounter trucks and driving styles should be adjusted to suite traffic conditions in the area.

Timothy Drive has a curb-to-curb width of 60 feet. Even with parking on both sides and a 12-foot wide two-way left-turn lane, 16-foot travel lanes are provided for through traffic. Timothy Drive has a two-way peak hour traffic volume of 161 vehicles during the AM peak commute hour and 121 vehicles during the PM peak commute hour. This roadway is designed to City standards for industrial streets, has low traffic volumes, and is wide enough to provide for safe vehicle operations, pedestrian circulation, and on-street parking.

A review of the accident data, provided by the City of San Jose Department of Transportation, reveals that in the last five years (January 1997 to January 2002) there have been only two accidents on Timothy Drive. One occurred late at night on a Saturday during rainy conditions and the other occurred at midday on a Thursday. Neither of the accidents involved injuries or pedestrians. Therefore, although Timothy Drive has on-street parking, no sidewalks, and a horizontal curve, vehicular traffic and pedestrians can operate safely.

The comment above makes reference to several other locations where trucks must make "sharp" turns to access the site. These locations are simply 90-degree intersections and driveways just like the ones found all over the city. The intersections in the study area provide the same degree of efficient and effective traffic operations as any other intersection in the city. The arrival rate of incoming trucks at the facility (sited above at one per minute) would not negatively affect traffic operations on any roadway in the study area. A flow rate of one vehicle per minute is a very low rate in the context of normal traffic operations. A person parked at the curb on Timothy Drive could quite easily access a car and make any necessary maneuvers to pull away from the curb and into the travel lane in the 60 seconds that would pass between truck arrivals.

An easement currently does not exist between the proposed project site and the Norcal site. Therefore, such an access point could not be assumed in the traffic analysis. The traffic impact analysis was done according to accepted standards and assumes all access occurs at existing access points to adjacent public roadways (Timothy Drive and Yard Court).

The applicant explored the potential of connecting the Norcal site to the proposed site. There are several issues that make this connection difficult. The following are issues that hampered this connection:

1. The elevation of the Norcal site is several feet below the grade of the proposed site. Connection would require a ramp approximately 100' long to accommodate the difference in elevation.
2. The ramp would necessitate crossing an existing high pressure jet fuel pipe line that traverses the rear of the site beneath the ground surface. The applicant contacted Chevron who owns the pipe and explored the potential of crossing this pipe. The pipe crossing would necessitate the construction of an on-grade bridge structure to span over the pipe thereby preventing the loads from passing vehicles to exert pressure on the pipe.
3. The Norcal property line adjoins the proposed site for a distance of approximately 17 feet. Given the need for a ramp and an on-grade bridge, this distance is not adequate to provide an appropriate width of the driveway connecting the sites. Additional width would need to be secured from one of the other adjoining property owners to provide adequate driveway width.

Given these circumstances, the applicant concluded that the pursuit of connecting the Norcal site to the proposed site for this Conditional Use Permit application would not be advisable given the necessity for this site to be functional pursuant to the city contract by July, 2002.

COMMENT 4

The proposed Project has unmitigated significant noise impacts. The Applicant's own noise consultant, Charles M. Salter Associates, Inc. ("Salter") finds that the Project as currently proposed will violate generally accepted standards for noise and exceed the City's noise thresholds, and thus will have a significant noise impact. To mitigate the noise impact to a level that is less than significant, a nineteen-foot (19-foot) and a twelve-foot (12-foot) sound barrier must be erected, which walls would conflict with other City policies and applicable design guidelines, and adversely impact neighboring properties. The City instead substitutes 10-foot and 8-foot walls. As a result, the Project will generate noise far beyond the 3dB level that the

consultant states is less than significant, in excess of the 70 dB allowable for recycling facilities under San Jose Municipal Code § 20.80.1130 and stated to be the maximum "satisfactory" level for noise in the San Jose 2020 General Plan's Land Use Compatibility Guidelines for Community Noise in San Jose for an industrial area, and greater than the 76 DNL "maximum exterior noise level necessary to avoid significant adverse health effects" as stated in the General Plan.

RESPONSE TO COMMENT No. 4**No Significant Noise Impacts**

The City of San Jose uses the General Plan Land Use Compatibility Guidelines for Community Noise as the standards of significance for impacts under the California Environmental Quality Act. Therefore, the proposed project, as originally analyzed for the Mitigated Negative Declaration, would not create significant noise impacts.

The project plans that were referenced in the Mitigated Negative Declaration proposed a wall height of 10 feet along the northeasterly property line; the applicant has now proposed to raise the wall along the northeast property line to 12 feet to provide additional noise attenuation beyond the level required to meet the General Plan Land Use Compatibility Guidelines for Community Noise. The proposed project does not have unmitigated significant noise impacts. Projected noise levels with mitigation are below DNL 70 dBA, the guideline in the General Plan for industrial areas, because the projected noise levels range from DNL 63 to 66 dBA as shown in the Environmental Noise Assessment. Project DNL increases above existing levels range from 0 to 5 dBA as shown in the table below. Since the projected noise levels are well below DNL 70 dBA, an increase of up to 5 dB is considered less than significant.

Project Noise Levels - General Plan DNL - Long Term Average

Location	Existing	Wall	Project Alone	Wall	Total w/ Mitigation	Difference
Northwest Property Line	64 dBA	6 ft.	48 dBA	6 ft.	64 dBA	0
Northeast Property Line	61 dBA	6 ft.	71 dBA	10 ft.	66 dBA	+5
Southwest Property Line	58 dBA	6 ft.	64 dBA	8 ft.	63 dBA	+5
Southeast Property Line	65 dBA	6 ft.	56 dBA	6 ft.	66 dBA	+1

Projected L_{\max} levels with mitigation are all less than the existing levels except for along the northeast property line where there would be a 3 dBA increase with a 12-foot wall as shown in the following table. An increase of 3 dBA would not be a significant impact.

Project Noise Levels - Zoning Ordinance - L_{\max}

Location	Existing	Wall	Project Alone	Wall	Total w/ Mitigation	Difference
Northwest Property Line	87 dBA	6 ft.	62 dBA	6 ft.	66 dBA	-21
Northeast Property Line	73 dBA	6 ft.	83 dBA	10 ft.	78 dBA	+5
			<u>Revised to 12 ft.</u>		76 dBA	+3
Southwest Property Line	81 dBA	6 ft.	76 dBA	8 ft.	77 dBA	-4
Southeast Property Line	87 dBA	6 ft.	66 dBA	6 ft.	69 dBA	-18

The increase of the proposed sound wall from 10 feet to 12 feet in height will not create any new significant impacts. Planning staff reviewed the project with the understanding that the sound wall could be as great as 19 feet in height in order to meet the Zoning Ordinance noise standards for projects that do not require a Conditional Use Permit. Even assuming a height of 19 feet, the wall can be designed with standard engineering techniques to comply with all local, State, and Federal life safety codes. The proposed sound wall will be located on a site that is in a Heavy Industrial area, as designated in the General Plan, and the site is in the HI-Heavy Industrial and LI-Light Industrial Zoning Districts. Moreover, the proposed sound wall will not be visible from a General Plan designated Scenic Corridor, and the sound wall will be designed to be visually compatible with surrounding industrial development.

Therefore, Planning staff finds that the proposed increase in the wall along the northeast property line to 12 feet will reduce the significant noise effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure. Planning staff further finds that the new measure is equivalent or more effective in mitigating or avoiding potential significant noise effects, and it in itself will not cause any potentially significant effect on the environment.

COMMENT 5

With the construction of the reduced walls, the Project will result in significant maximum noise levels (L_{max}) of 78 dBA along the northeast property line and 77 dBA along the southwest property line. These levels are not only in excess of the levels permissible under the City's zoning ordinance, but also violate provisions of the San Jose 2020 General Plan cited above. Therefore, the Project's significant noise impact will not be properly mitigated, and a significant adverse impact will result.

RESPONSE TO COMMENT No. 5

No Significant Maximum Noise Level and no Significant Adverse Impact

The Zoning Ordinance allows maximum noise levels to exceed 70 dBA (L_{max}) with the issuance of a Conditional Use Permit. As previously stated, The City of San Jose uses the General Plan Land Use Compatibility Guidelines for Community Noise as the standards of significance for impacts under the California Environmental Quality Act and the guideline in the General Plan for maximum noise levels in industrial areas is DNL 70 dBA. A comparison of columns in the above-listed table entitled, "Project Noise Levels - Zoning Ordinance - L_{max} " excerpted from the Environmental Noise Assessment, shows that the northeast property line is the only location where the project actually causes an increase over existing L_{max} levels. This increase of 3 dBA L_{max} would be mitigated to a non-significant level by a 12-foot wall.

COMMENT 6

Salter's noise analysis states that the Project, with the City's mitigation measures incorporated, will cause an increase of 5 dB in the average DNL along the northeast and southwest property lines. Salter states that a 3dB increase is less than significant, and a DNL increase of 3 to 5 dB may be acceptable in certain circumstances, such as when existing noise level is below the

thresholds described in the Zoning Ordinance and General Plan. (Applicant's Noise Analysis at page 2.) Here, L_{max} noise levels are 87 dBA along two property lines, and 81 dBA and 73 dBA along the two remaining property lines and therefore, noise levels exceed the threshold of 70 dBA described in the City's zoning ordinance.

RESPONSE TO COMMENT No. 6

No Significant Noise Impact

As noted in the response to comment 4, the 5 dB increase in DNL is less than significant since the resulting level is below the General Plan guideline of DNL 70 dBA. The project complies with General Plan guidelines. The L_{max} numbers listed in comment 6 are the existing maximum noise levels. Except along the northeast property line, project generated maximum noise levels are below the existing maximum levels. The increase along the northeast property line is permissible with the issuance of a Conditional Use Permit, and would be mitigated to a non-significant level by a 12-foot wall.

COMMENT 7

Also, the noise analysis is inadequate because it did not analyze the potential impacts of project-generated traffic noise to the businesses along Timothy Drive, Yard Court and Mabury.

RESPONSE TO COMMENT No. 7

No Significant Project-generated Noise Impact

Project-generated traffic would not have a significant impact on local streets. The approximate project-generated traffic noise along Mabury Road, Timothy Drive and Yard Court was calculated, based on calculations of the truck and automobile counts in the Initial Study. It was assumed that delivery and load-out trucks will not come to the site between 10:00 PM and 7:00 AM. The only nighttime traffic generated by the project will be 22 employee automobiles arriving between 5:00 and 6:00 AM. The result was DNL 61 dBA at a distance of approximately 15 feet from the edge of the roadway. Combined with the existing level measured on Yard Court (65 dBA), the project plus existing noise level is DNL 67 dBA. This represents a 2 dB increase and results in a level below the General Plan guideline of DNL 70 dBA for industrial areas. Due to larger existing volumes, the project's impact on other streets would be even less.

COMMENT 8

The noise impacts noted above that will result from the Project are significant under CEQA. The CEQA Guidelines Checklist identifies noise impacts as significant when any of the following occur: exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies; a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; or a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project. All of these noise effects will occur and remain unmitigated under the Project as currently proposed, necessitating the preparation of an EIR for the Project.

RESPONSE TO COMMENT No. 8

No Significant Noise Impacts

The project DNL levels at property lines range from 63 to 66 dBA and are below the General Plan standard of DNL 70 dBA for industrial areas. The project would exceed the L_{\max} level of 70 dBA along the northeast and southwest property lines. However, the increase along the southwest property line is less than the existing level and the increase along the northeast property line is 3 dB, which would not be significant. In addition, these noise levels would be short-term occurrences and not long-term averages that are allowable with the issuance of a Conditional Use Permit. The project would not cause substantial permanent increases in the project vicinity as the maximum increase would be 5 dB and the project DNL levels (63-66 dBA) would all be below 70 dBA. The project would not cause a temporary or periodic increase in ambient noise greater than 3 dBA, which would not be significant.

COMMENT 9

The MND fails to demonstrate that the odor generated by the Project will be adequately mitigated. The description of the environmental setting prepared by Brown, Vence & Associates, Inc., identifies odor as a potential adverse impact of the Project. Odor will be generated as recyclable materials containing odorous contents such as soured milk or other residue, or unacceptable and unrecyclable materials, are handled. The MND requires misting and application of an unspecified “odor suppressant or enzymatic neutralizers” as mitigation, but does not explain how the odor neutralizer has been determined to be effective at similar facilities or quantify the expected impact and degree of mitigation. Therefore, there are no facts upon which to base a conclusion that this impact is mitigated.

RESPONSE TO COMMENT No. 9

No Significant Odor Impact

Operating practices that have been used successfully in similar facilities substantially mitigate potentially fugitive odors. The project includes removing putrescible waste which is defined as waste “being decomposed by micro-organisms with sufficient rapidity to cause nuisances because of odors, vectors, gases or other offensive conditions, and include materials such as, but not limited to food wastes, offal and dead animals,” from the site regularly and promptly and containing operations and storage of potentially malodorous materials inside. The project is a recycling facility that will handle only a small percentage of non-recyclable materials. However many solid waste transfer stations that handle only municipal solid waste can be found operating with no odor mitigation mechanisms and no odor migration complaints. This facility will handle less than ten percent non-recyclable materials and less than one percent putrescible materials as required by State regulations.

The misting system is proposed to mitigate both dust and odor within the enclosed facility and on the tipping floor. This approach has consistently proven effective in removing particulate and odors molecules from the atmosphere. Mitigating potential odors inside the facility prevents them from migrating from the project site. Similar systems using similar odor suppressants are installed and are believed to be operating at the following solid waste and recycling facilities:

City of Carson Transfer Station, Carson, CA
Sanitary Fill Company Transfer Station, San Francisco, CA
Rainbow Transfer and Recycling Center, Stanton, CA
North Area Transfer Station, Sacramento County, CA
Sacramento Recycling and Transfer, Sacramento, CA

COMMENT 10

The proposed Mitigated Negative Declaration Is flawed because it ignores the impacts of nearby past, present and future projects which may render the environmental effects of this Project cumulatively considerable.

*Pursuant to CEQA, the City was required to assess whether cumulative effects result from the Project. (CEQA Guidelines § 15064(i)(1)). An EIR must be prepared if the Project's incremental effect, though individually limited, is "cumulatively considerable" when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects. (*Id.*) Here, the Initial Study and the traffic and noise analyses upon which it relies completely ignore the impacts of approved and probable future projects in the area.*

The City was required to consider the Project against the backdrop of past projects, such as the Norcal greenwaste recycling facility and transfer station approved in October 2001 pursuant to CP-01-07-058 on a site adjacent to the Project site. See, San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal.App.4th 608 [49 Cal.Rptr. 2d 494] (discussing cumulative impacts analysis required in initial study). The Norcal greenwaste transfer facility includes a corporation yard, truck maintenance/wash facility and office building, and will operate 24 hours per day, 7 days per week. The facility will generate 106 round trip truck trips per day, impacting the intersections of Commercial Street and Old Oakland Road and Commercial Street and Berryessa Road, which will be further impacted by this Project.

The Applicant's Report for the present Project was required to consider these added vehicle trips, particularly in light of the facts that the same traffic consultant prepared the traffic analyses for both projects; and the two facilities will function as a single operation in many respects, with the Applicant of this Project serving as a subcontractor for Norcal. Further, noise and odor emanating from the approved greenwaste recycling facility were not considered in determining the preexisting noise levels and odor conditions at the Project site, and in determining the noise levels and odor conditions that will result should the Project be approved.

RESPONSE TO COMMENT No. 10

No Cumulatively Considerable Impacts

The proposed Mitigated Negative Declaration is not flawed. The Mitigated Negative Declaration included reasonably foreseeable projects in accordance with CEQA and the City of San Jose standard practices. The Norcal facility on Berryessa Road is an approved development, and as such, must be included in the background scenario of any traffic impact analysis completed in the area, per City guidelines. Traffic from the approved Norcal facility was included in the project's traffic impact analysis, as stated on page 22 of Traffic Impact Analysis.

The only planned or potential future developments in the study area are the Nella Oil site located on the northeast quadrant of Oakland Road and Commercial Street, and the SDRC Inc. facility located on Berryessa Road east of Commercial Street. The Nella Oil development is the expansion of an existing truck refueling facility. The SDRC Inc. facility is a concrete and asphalt crushing facility. The project would not cause any impacts under cumulative conditions, no matter what baseline it is evaluated against, because of the small number of peak hour trips that would be added to the roadway system (10 during the AM peak period and 26 during the PM peak period).

COMMENT 11

The City also should have considered whether the impacts of this Project will be cumulatively considerable in light of the proposed amendment in General Plan designation of the land on Berryessa Road currently used as a flea market to residential uses, and other probable future projects. The City, however, failed to consider any of these projects when conducting its initial study, and thus the MND understates the environmental impacts that will occur as a result of this Project.

RESPONSE TO COMMENT No. 11

No Cumulatively Considerable Impacts

The General Plan Amendment application (GP01-04-04a & b) for residential use on the San Jose Flea Market property was withdrawn. The City is conducting a Housing Opportunity Study that will look at several sites throughout the City that may be considered for residential use in the future. The earliest timeframe that the Flea Market site would be considered as a potential site by Planning Commission would be in 2003. Even if the Flea Market site is considered for residential use at that time, it is presently unknown whether or not the site would actually be re-designated or redeveloped for residential use. The subject Conditional Use Permit is proposed to be time-limited and expire in five (5) years unless an amendment is filed to extend the time limit. Therefore, in the event that the Flea Market site or other sites within 1,000 feet of the subject site are re-designated for residential use within the next five years, these sites would be considered in the review of any application to extend the duration of the subject Conditional Use Permit.

COMMENT 12

The Project should be rejected because the proposed use is inconsistent with the parcel's Light Industrial Zoning and General Plan policies for Solid Waste Processing Facilities. While the Project site has a General Plan designation of Heavy Industrial (HI), a portion of the parcel is zoned Light Industrial (LI), as are all of the properties east and most of the properties south of the Project site. The Applicant's project description states that the Applicant will submit separately an application to conform the zoning with the intended heavy industrial use. However, at that time it will be too late to analyze whether the heavy industrial use is appropriate at this location under the City's zoning and General Plan standards. Unless and until the portion of the property zoned for Light Industrial uses is rezoned to allow for Heavy Industrial uses, the City may not approve the proposed solid waste recycling processing facility.

RESPONSE TO COMMENT No. 12

No Zoning or General Plan Inconsistencies

Recycling processing and transfer facilities are permitted in both the Light Industrial (LI) and Heavy Industrial (HI) zoning districts, as prescribed in Title 20, Section 20.50.100 with a Special Use Permit, although a Conditional Use Permit is required in this case because of the sound pressure level generated at the property line. Rezoning the southerly section will simply establish a single zoning district on the entire site that is in conformance with the Heavy Industrial General Plan land use designation.

COMMENT 13

Section 20.50.010 of the San Jose Municipal Code describes warehousing, wholesaling and light manufacturing as typical uses in the Light Industrial zones, and specifically states that the zoning "excludes uses with unmitigated hazardous or nuisance effects." Here, such unmitigated hazardous or nuisance effects as noise, traffic, and odor will occur, rendering the Project inappropriate in a Light Industrial Zone.

RESPONSE TO COMMENT No. 13

No Inappropriate Uses Proposed in the Light Industrial Zoning District

As described in the Project Description and Environmental Setting (Initial Study) and the preceding responses, the proposed project would not have any unmitigated hazardous or nuisance effects in the areas of noise, traffic or odor and would, therefore, not be excluded from the Light Industrial zoning district.

COMMENT 14

Furthermore, the Project as currently proposed is not allowable in the proposed location under the standards for solid waste recycling processing facilities set forth in the City's General Plan, even if the proposed Project site were rezoned Heavy Industrial. The General Plan's Heavy Industrial land use category allows solid waste transfer and processing stations, "but only for

sites which meet all General Plan policies such as adequate access, [and] compatibility with surrounding land uses.” As noted above, the proposed site is located at a skew to the roadway in an area that has dangerous road conditions and inadequate truck storage and queuing capacities, and therefore does not have adequate access. Furthermore, the traffic, noise and odor generated by the Project render it incompatible with the surrounding light industrial land uses.

RESPONSE TO COMMENT No. 14

No Incompatible Land Uses Proposed and no General Plan Inconsistencies

As described in the Project Description and the preceding responses, the project site has adequate access and queuing and storage capacity so that it will not disrupt traffic on the local streets. Parcels located adjacent and across the street from the project site are located in the Heavy Industrial and Light Industrial zoning districts, are designated Heavy Industrial by the General Plan, and the uses on these parcels are currently industrial and industrial-serving uses. With the project design and mitigation measures, the proposed recycling processing and transfer facility is compatible with the surrounding uses. There would be no significant traffic, noise or odor impacts on the surrounding uses.

COMMENT 15

The proposed MND should not be adopted. A fair argument has been made that the Project may have a significant adverse effect on the environment that will not be mitigated and therefore, an EIR is required for the Project. Potential environmental effects of the Project were not adequately studied in the Initial Study.

RESPONSE TO COMMENT No. 15

No Significant Adverse Effect on the Environment that will not be Mitigated

All of the potential significant impacts of the project have been adequately reviewed and mitigated to a non-significant level by the project design and mitigation measures included in the project. Therefore, a Mitigated Negative Declaration is the appropriate CEQA document and an EIR is not required.

CONCLUSION

The Initial Study prepared for this project examined the potential significant environmental impacts for the proposed Conditional Use Permit. The Director of Planning concluded that there was no substantial evidence in the whole of the record that the proposed project would result in a significant environmental impact. The project would not result in significant traffic, air quality, or noise impacts, and an Environmental Impact Report is not warranted. Consequently, the preparation of an EIR is unnecessary.

The protest letter received on the Draft Mitigated Negative Declaration does not contain substantial evidence to prove that this proposed project would result in a significant adverse effect on the environment. CEQA requires that, if a lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, in the public record. Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, or information that is not in the record, including information to be presented at a future date, do not constitute substantial evidence.

As of present, the City has not received documentation of any facts to support the issues raised in the protest letter that would indicate that the proposed project will have a significant effect on the environment. In the absence of substantial evidence in the record that demonstrates the project may have a significant impact on the environment, Planning staff believes that the City need not prepare an EIR.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission at this time are to uphold the Mitigated Negative Declaration for the Conditional Use Permit proposal or to require the preparation of an EIR.

RECOMMENDATION

The Director of Planning recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the Conditional Use Permit.

JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement

c: Rosendin Electric c/o Berliner Cohen
California Waste Solutions c/o Tim Raibley

Attachments:

Negative Declaration protest hearing notice

Location map

Mitigated Negative Declaration

Original Negative Declaration notice

Letter from Appellant including appellant's attachment of Korve Traffic Memo

Initial Study Checklist

City of San Jose, Dept. of Streets and Traffic, Traffic Accident History Report for Subject Site

Letter from State Clearinghouse

Letter from California Dept. of Transportation

Letter from CIWMB

E-mail from Tim Raibley

